

# ORDINANCE 1503

**AN ORDINANCE OF THE CITY OF NORTH BEND, WASHINGTON, RENEWING A SIX-MONTH MORATORIUM WITHIN THE CITY OF NORTH BEND ON THE ESTABLISHMENT OF MEDICAL MARIJUANA OR CANNABIS DISPENSARIES, PRODUCTION FACILITIES, AND PROCESSING FACILITIES, AND ON THE LOCATION, OPERATION, LICENSING, MAINTENANCE OR CONTINUATION OF MEDICAL CANNABIS COLLECTIVE GARDENS; DEFINING TERMS; ESTABLISHING A WORK PLAN REGARDING CITY REGULATIONS REGARDING MEDICAL MARIJUANA; AND PROVIDING THAT THE RENEWAL OF THE MORATORIUM WILL TAKE EFFECT IMMEDIATELY UPON PASSAGE**

**WHEREAS**, on June 7, 2011, the City Council of the City of North Bend, Washington, adopted Ordinance 1433 which first enacted a moratorium on the establishment, location, operation, licensing, maintenance or continuation of medical cannabis collective gardens or dispensaries; and

**WHEREAS**, Initiative Measure No. 692, approved by the voters of Washington State on November 30, 1998, and now codified as Chapter 69.51A RCW, created a limited defense to marijuana charges under state, but not federal, law, if the person charged could demonstrate that he or she was a qualifying patient or designated provider as those terms are defined in Chapter 69.51A RCW; and

**WHEREAS**, in 2007, the state legislature amended the law, and again in 2011, the state legislature passed a third amendment to the law, E2SSB 5073, Chapter 181, Laws of 2011, which took effect on July 22, 2011; and

**WHEREAS**, no provision of E2SSB 5073 precludes the City from zoning or otherwise regulating medical cannabis collective gardens in a manner consistent with the provisions therein; and

**WHEREAS**, the possession or distribution of cannabis (marijuana) has been and continues to be a violation of federal law, through the Controlled Substances Act (“CSA”); and

**WHEREAS**, two U.S. Attorneys, Michael Ormsby and Jennifer Durkan wrote a letter to the Washington State Governor in 2011, stating that marijuana is a Schedule I controlled substance under federal law and, as such, “growing, distributing and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of

federal law regardless of state laws permitting such activities.” These U.S. Attorneys also concluded, “state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA;” and

**WHEREAS**, the enactment of E2SSB 5073 has created uncertainty regarding the appropriate regulation of marijuana in the City because at least some or all of the provisions of E2SSB 5073 appear to be in conflict with federal law; and

**WHEREAS**, the City is the recipient of multiple federal grants for which compliance with all federal laws is a requirement; and

**WHEREAS**, the enactment by the voters in November 2012 of Initiative 502 regarding limited marijuana possession and use has created additional uncertainty regarding the appropriate regulation of marijuana in the City; and

**WHEREAS**, the City Council held a public hearing on the extension of the moratorium on April 16, 2013, and thereafter passed Ordinance 1487, renewing the moratorium for six months to provide additional time to research and recommend to the City Council a regulatory framework and to further refine the City’s work program; and

**WHEREAS**, the State Liquor Control Board released proposed rules for the regulation of marijuana producers, processors and retailers in September 2013, pursuant to Initiative 502; and

**WHEREAS**, the State Liquor Control Board will hold a final hearing on the proposed rules on October 16, 2013; and

**WHEREAS**, the City continues to develop a work program to analyze potential changes to city zoning regulations that may be necessary to address changes in State or federal law, and to bring any amendments to the North Bend Municipal Code before the Planning Commission and City Council for their consideration; and

**WHEREAS**, the Community and Economic Development Department has diligently pursued the issue but has recommended to the Council that it needs additional time to develop a workable set of recommendations for local land use controls for safe and effective regulation of collective gardens in the community under State and federal law and in light of the State Liquor Control Board proposed rules; and

**WHEREAS**, the City Council held a public hearing on the extension of the moratorium on October 15, 2013; and

**WHEREAS**, it is important to ensure that the existing moratorium is continued without interruption due to publication problems or other unforeseen delays;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY NORTH BEND, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Findings of Fact:** The recitals set forth above, as well as those set forth in earlier ordinances establishing or renewing this moratorium, are hereby adopted as the City Council's findings in support of the moratorium renewed by this ordinance.

**Section 2. Moratorium Established:** Pursuant to the provisions of Article 11, Section 11 of the Washington State Constitution, RCW 35A.63.220, and RCW 36.70A.390, the moratorium established by Ordinance 1433 is hereby renewed for a term of six (6) months, during which time the following is prohibited within the City of North Bend: the establishment, location, operation, licensing, maintenance, or continuation of any medical cannabis collective garden or any medical marijuana dispensary, whether for profit or not for profit, asserted to be authorized or actually authorized under E2SSB 5073, Chapter 181, Laws of 2011, Chapter 69.51A RCW, or any other laws of the state of Washington. Further, no building permit, occupancy permit, or other development permit or approval shall be issued for any of the purposes or activities listed above, and no business license shall be granted or accepted while this moratorium is in effect. Any land use permits, business licenses or other permits for any of these operations that are issued as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void, and without legal force or effect. As used in this ordinance, the following terms have the meanings set forth below:

A. "Medical marijuana dispensary" means any business, agency, organization, cooperative, network, consultation operation, or other group, or person, no matter how described or defined, including its associated premises and equipment, which has for its purpose or which is used to grow, select, measure, package, label, deliver, sell, or otherwise transfer (for consideration or otherwise) marijuana for medical use. One (1) individual person who is the designated provider for only one (1) qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, shall not be deemed a medical marijuana dispensary for the purposes of this moratorium.

B. "Medical marijuana collective garden" means a group of qualifying patients that share responsibility for acquiring and supplying the resources required to produce and process marijuana for medical use. Examples of collective garden resources would include, without limitation, the following: property used for a collective garden; or equipment, supplies, and labor necessary to plant, grow and harvest marijuana; marijuana plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of marijuana plants. A medical marijuana collective garden shall satisfy the above definition regardless of its formation, ownership, management, or operation as a business, agency, organization, cooperative, network, consultation operation, group, or person. One (1) individual person who is the designated provider for only one qualified patient during any 15 day period and who complies with Chapter 69.51A RCW, or an individual person who is a qualified patient and who complies with 69.51A RCW, shall not be deemed a medical marijuana collective garden for the purposes of this moratorium.

**Section 3. No Nonconforming Uses:** No use that constitutes or purports to be a medical marijuana dispensary or medical marijuana collective garden as those terms are defined in this ordinance, and that was engaged in that activity prior to the enactment of this ordinance, shall be deemed to have been a legally established use under the provisions of

the North Bend Municipal Code and no such use shall be entitled to claim legal nonconforming status.

**Section 4. Effective Period for Renewal of the Moratorium:** The renewal of the moratorium set forth in this ordinance shall be in effect for a period of six (6) months from the effective date of this ordinance, and shall automatically expire at the conclusion of that six-month period unless the same is extended as provided in RCW 35A.63.220 and RCW 36.70A.390, or unless terminated sooner by the city council.

**Section 5. Public Hearing:** Pursuant to RCW 35A.63.220 and RCW 36.70A.390, the City Council held a public hearing during the City Council's regular meeting on October 15, 2013.

**Section 6. Referral to Staff:** The Planning and Economic Development Director and the Finance Manager are hereby authorized and directed to follow the Work Plan attached as Exhibit A and to take steps necessary to develop appropriate land use, business licensing, and other regulations for presentation to the North Bend City Council.

**Section 7. Severability:** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**Section 8. Effective Date:** This Ordinance, as a public emergency ordinance necessary for the protection of the public health, public safety, public property, or public peace, shall take effect and be in full force immediately upon its adoption. Pursuant to *Matson v. Clark County Board of Commissioners*, 79 Wn. App. 641, 904 P.2d 317 (1995), underlying facts necessary to support this emergency declaration are included in the "WHEREAS" clauses, above, all of which are adopted by reference as findings of fact as if fully set forth herein.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 15<sup>TH</sup> DAY OF OCTOBER, 2013.**

**CITY OF NORTH BEND:**

**APPROVED AS TO FORM:**

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**Kenneth G. Hearing, Mayor**

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**Michael R. Kenyon, City Attorney**

**ATTEST/AUTHENTICATED:**

Published: October 23, 2013  
Effective: October 15, 2013

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**Susie Oppedal, City Clerk**